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FILED
OREGON JUDICIAL DEPARTMENT
WASHINGTON COUNTY

2011 AUG -3 AM 11:05

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

LYUBOV YOVKO,

Plaintiff,

v.

NORTHWEST TRUSTEE SERVICES, INC.
as Successor Trustee; AMERICA'S
SERVICING as Loan Servicer; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., as Nominee for
Beneficiary; and HSBC BANK USA,
NATIONAL ASSOCIATION, as Trustee for
the Holders of DEUTSCHE ALT-A
SECURITIES MORTGAGE LOAN TRUST,
SERIES 2006-AR1,

Defendants.

Case No. C11-0703CV

ORDER RE PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

On February 4, 2011, the Court entered a Temporary Restraining Order ("TRO") restraining the foreclosure sale scheduled for February 7, 2011, on plaintiff's real property located at 17427 SW Rivendell Drive, Durham, Oregon. The TRO required a bond in the amount of \$3,500. On April 25, 2011, a Preliminary Injunction Hearing was held with Pilar C. French appearing on behalf of defendants Wells Fargo Bank, N.A. dba America's Servicing Company ("Wells Fargo"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and HSBC Bank USA, National Association as Trustee for the Deutsche Bank Alt-A Securities Mortgage Loan Trust ("HSBC"), Series 2006-AR1; Robert J. Pratte appearing on behalf of defendant MERS; Ian H. Kyle appearing on behalf of defendant Northwest Trustee Services, Inc.; and John P. Bowles and Richard M. Fernandez appearing on behalf of plaintiff. The Court, having examined the pleadings and records herein, heard testimony of plaintiff's witness,

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cc: Act.

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CAND

LANE POWELL PC
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PORTLAND, OREGON 97204-3158
503 778 2100 FAX 503 778 2200

EXHIBIT

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PAGE

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1 Victoria Shavlovskiy, and oral argument of the parties, and being fully advised; NOW,
2 THEREFORE,

3 IT IS HEREBY ORDERED AND ADJUDGED:

4 1. Plaintiff's motion for a preliminary injunction is denied. In accordance with
5 plaintiff's burden, she failed to establish by clear and convincing proof: (a) a probability of
6 prevailing on the merits; (b) irreparable injury; or (c) that the balance of hardship favors the
7 plaintiff, for the following reasons:

8 a. Plaintiff borrowed money with a promise to repay it. She further agreed
9 that if she did not repay the loan, the lender could foreclose. Both parties to the loan agreement,
10 including plaintiff, have an obligation to fulfill their promises.

11 b. Plaintiff's daughter has been communicating with loan servicer, Wells
12 Fargo, on behalf of the owner of plaintiff's loan, HSBC. There is no question that plaintiff
13 knows, and has known, to contact Wells Fargo to address concerns about her loan.

14 c. Plaintiff is clearly in default on her loan by a significant amount of money
15 and has been in default for a significant amount of time. The lender therefore is entitled to
16 conduct a non-judicial foreclosure sale of the property that secures the loan.

17 d. Plaintiff's arguments that the non-judicial foreclosure is somehow
18 defective because defendant MERS is the beneficiary named in the trust deed are a "red herring."

19 e. Public policy demands that people are required to deal fairly with each
20 other regarding their agreements and all parties to the agreements are required to fulfill their
21 obligations.

22 2. All restraining orders previously entered in this case are dissolved effective
23 immediately.

24 3. The nonjudicial foreclosure sale on plaintiff's real property located at 17427 SW
25 Rivendell Drive, Durham, Oregon, may proceed. If there are errors after that, plaintiff can sue
26 for damages at that point.

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4. Any monies plaintiff posted as security for the restraining orders previously entered are hereby released to the defendants, care of their attorney, Pilar C. French.

DATED: 3 Aug., 2011

AB

The Honorable D. Charles Bailey

Submitted by:

Pilar C. French, OSB #962880
Of Attorneys for Defendants Wells Fargo Bank, N.A.,
Mortgage Electronic Registration Systems, Inc. and
HSBC Bank USA, National Association

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on June 28, 2011, I caused to be served a copy of the foregoing
3 [PROPOSED] ORDER RE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION on
4 the following person(s) in the manner indicated below at the following address(es):

5 **John P. Bowles, Esq.**
6 E-Mail: attorney.john.p.bowles@gmail.com
7 **Richard M. Fernandez, Esq.**
8 E-Mail: rfdezlaw@gmail.com
9 **BOWLES FERNANDEZ LAW LLC**
10 5200 SW Meadows Drive, Suite 150
11 Lake Oswego, OR 97035

12 *Attorneys for Plaintiff*

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Attorneys for Northwest Trustee Services, Inc.

11 **Robert J. Pratte, Esq.**
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16 E-Mail: robert.pratte@dlapiper.com

17 *Attorney for MERS*

- 18 ☐ by CM/ECF
19 ☒ by Electronic Mail (to Mr. Bowles/Mr. Fernandez 6/27/11)
20 ☐ by Facsimile Transmission
21 ☒ by First Class Mail
22 ☐ by Hand Delivery
23 ☐ by Overnight Delivery

24 
25 _____
26 Pilar C. French

CERTIFICATE OF SERVICE